SIN SIAN HONG & ANOR.

v.

MAU YOON SWEE

FEDERAL COURT, JOHOR BAHRU
WAN SULEIMAN ACTING CJ (MALAYA)
SYED OTHMAN FJ
ABDUL HAMID OMAR FJ
[CIVIL APPEAL NO. 44 OF 1981]
17 JULY 1982

CIVIL PROCEDURE: *Appeal - Costs - Application for order that security be given - Meaning of "nominal plaintiff".*

The respondent in the appeal applied by way of notice of motion for an order that the appellants be made to give security, for the costs of the appeal and until such costs be given, the appeal be stayed. According to the respondent, the appellants were merely nominal appellants acting as administrators and that they would not be able to pay the costs of the application should they fail in their appeal.

Held:
The appellants as administrators of an estate, were not nominal plaintiffs as would be governed by O. 23 r. 1(1)(b), Rules of the High Court 1980.

[Motion dismissed with costs]

Case referred to:
Rainbow & Kittoe [1916] 1 Ch D 313

Legislation referred to:
Rules of the High Court 1980, O. 23 r. 1(1)(b)

Other sources referred to:
Supreme Court Practice 1979 Pt. I pp. 393, 394

For the appellants - A.K. Bashir M/s. Bashir & Co.
For the respondent - F.H.D'Cruz M/s. Thakurta & Low

JUDGMENT

Wan Suleiman Acting CJ (Malaya):

This is an application by way of Notice of Motion by the respondent in this appeal. On the 4 March 1981 judgment with costs was delivered in his favour in the High Court, Malacca. Cost was taxed on 5 May 1981 at RM6,188 inclusive of allocatur fees. The appellants have not paid the costs todate.

The applicant/respondent alleges that the appellants have no interest in the subject matter of the appeal. According to respondent they are merely nominal appellants acting as administrators of the estate of Chiew Chiang Seng @ Chew Chiang Seng, deceased. The assets of the estate of the aforesaid deceased is a claim to the land Holding No. 114, T. A. XXXVII, Malacca, the subject matter of this appeal.

The applicant/respondent claims that as a result of enquiries made by him he believes that there is no other asset of the estate apart from the land aforementioned. He fears that the appellants would not be able to pay the costs of the applicant should they fail in their appeal. He therefore applies for an order that the appellants be made to give security in the

sum of RM30,000 or such other sum as this Court thinks just for the costs of this appeal, and until such costs be given this appeal be stayed. Order 23 r. 1(1)(b) of the Rules of the High Court 1980 would therefore apply.

For convenience it is set out hereunder:

> 1. (1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court
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> (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or ...

It would therefore appear that the appellants are not nominal plaintiffs. For what a "nominal plaintiff" is, see pp. 393 and 394 of *Supreme Court Practice* 1979 Pt. I and *Rainbow v. Kittoe* [1916] 1 Ch D 313. In the latter case the plaintiff who was an administrator, even though the letters of administration was only granted to him as the attorney of a person who was abroad and until that person obtained letters of administration, and although he was shown to be insolvent, was not ordered to give security for the defendant's costs.

We would therefore dismiss this motion with costs.

Also found at [1983] 2 CLJ 24